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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Steven J. Silmske

Examiner: Cuong H. Nguyen

Serial No.: 10/700,243

Art Unit: 3681

Filed: November 3, 2003

For: Navigation Routing System
and Method

Date of Final Office Action:
January 3, 2008

Attorney Docket No.:
200900232-1

PETITION TO DIRECTOR UNDER 37 CFR §1.181
TO WITHDRAW PREMATURE FINAL REJECTION

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the Final Office Action of January 3, 2008, Applicant respectfully requests withdrawal of the Final Rejection since it is premature.

CERTIFICATE OF FACSIMILE

I hereby certify that these papers are being transmitted to The Patent and Trademark Office facsimile number (571) 273-5000 on March 14, 2008.

Cuong H. Nguyen
Doreen Day

Docket No. 200300232-1

Remarks

This Petition is responsive to the January 3, 2008 Final Office Action.

Withdrawal of Final Rejection

Applicant petitions to withdraw the Final Rejection under 37 CFR §1.181, MPEP §1002.02(c), and MPEP §706.07(a) since the Final Rejection is premature.

In the first Office Action dated June 15, 2007, the claims were rejected under 35 U.S.C. §102. In applicant's response dated September 17, 2007, no claims were amended.

The present Final Rejection was then issued on January 3, 2008 that withdrew the previous rejections and issued a new ground of rejection based on 35 U.S.C. §112, first paragraph. A final rejection in this scenario is improper under MPEP 706.07(a), second paragraph, which states:

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) ..." [emphasis added]

Since applicant did not amend the claims and the examiner introduced a new ground of rejection, the present rejection should not be final. Thus the final rejection is improper and should be withdrawn.

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Conclusion

For the reasons set forth above, the Final Rejection is improper and should be withdrawn. An early decision on Applicant's Petition is earnestly solicited.

Respectfully submitted,



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